



JIM COLLINS

175 IBLA 389

Decided August 28, 2008



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

JIM COLLINS

IBLA 2008-89

Decided August 28, 2008

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring a placer mining claim null and void *ab initio* because the claim cannot be described in aliquot parts. NMC 964182.

Set Aside and Remanded.

1. Mining Claims: Location--Mining Claims: Placer Claims

Where BLM correctly determined that the placer mining claim shown on appellant's location map could not be described by aliquot parts or lots, but did not consider whether the land description is as compact and regular in form as reasonably possible and whether it can practicably be conformed to the Public Land Survey System, the Board properly sets aside the decision and remands the case for further consideration.

APPEARANCES: Jim Collins, Beatty, Nevada, *pro se*.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Jim Collins has appealed <sup>1</sup> the January 7, 2007, decision of the Nevada State Office, Bureau of Land Management (BLM), holding the K. S. and I. placer mining claim (NMC 96182) null and void *ab initio* because the claim cannot be described in aliquot parts. Citing 43 C.F.R. § 3832.12(c)(1), the decision stated that a placer mining claim must be described "by aliquot part and complete lots unless the claim is located on unsurveyed Federal lands; is a bench or gulch placer claim; or is bounded by other mining claims or nonmineral lands." Decision at 1. The decision tersely concluded that Collins'

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<sup>1</sup> The decision was issued to Collins and co-locators Juanita Collins and Ray McNally. Only Jim Collins appealed.

certificate of location describes the mining claim by aliquot part; however, the claim, as depicted on the location map, cannot be described by aliquot parts or lots in accordance with the U.S. Public Land Survey System and its rectangular subdivisions. Therefore your claim is declared null and void *ab initio*.

*Id.* As set forth in the certificate of location decision, the mining claim embraces 40 acres described as the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of surveyed sec. 3, T. 39 N., R. 51 E., Mt. Diablo Meridian (MDM). The record includes a copy of the Master Title Plat (MTP) for T. 39 N., R. 51 E., and a detail map of sec. 3, presumably prepared using a global positioning system.<sup>2</sup> That detail of the MTP closely resembles Collins' maps and clearly shows that his claim is positioned so that portions of it embrace four different quarter-quarters in the north half of sec. 3. Moreover, it appears that Collins' claim partially intrudes upon patented lands immediately to the east of the K. S. and I. placer mining claim.

In his Statement of Reasons (SOR), Collins acknowledges that the claim is bounded on its east side by the patented Contention lode mining claim, and that its northeast corner is "South 74 degrees west and 2200 feet from the Cadastral Survey marker." SOR at 1. Collins enclosed a copy of the original map that was submitted with the location notice and an updated version of the map in support of his appeal. The updated map identifies the four corners of the claim directionally ("S-W corner," "N-W corner," and so on), provides the length of the northerly and southerly boundaries (1,161 feet), where the original map had provided the length of only the east and west boundaries (1,500 feet), and notes the sections in the adjoining Township to better identify what we assume is a BLM Cadastral Survey monument (at the common corner of secs. 2 and 3, T. 39 N., R. 51 E., MDM, and secs. 34 and 35, T. 40 N., R. 51E., MDM) to which the claim's northeast corner is tied. The updated map is otherwise identical to the original map.

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<sup>2</sup> An explanation of the detail of the MTP would have been helpful. It shows what we understand to be superimposed positions of mineral entries in the vicinity of Collins' claim, with points that we assume are section, quarter-section, quarter-quarter-section, and other survey or claim monuments, shown in red and in green. Beneath the positions shown in red, the same entries are depicted in black, and there is a noticeable difference in the two positions thus depicted.

The regulations in 43 C.F.R. Part 3832 are derived from the Mining Law of 1872, codified *as amended* at 30 U.S.C. §§ 35 and 36 (2000).<sup>3</sup> The regulations address general requirements for all claims and mill sites:

You must describe the land by state, meridian, township, range, section and by aliquot part to the quarter section. To obtain the land description, you must use an official survey plat or other U.S. Government map that is based on the surveyed or protracted U.S. Public Land Survey System. *If you cannot describe the land by aliquot part (e.g., the land is unsurveyed), you must provide a metes and bounds description that fixes the position of the claim corners with respect to a specified claim corner, discovery monument, or official survey monument. In all cases, your description of the land must be as compact and regular in form as reasonably possible and should conform to the U.S. Public Land Survey System and its rectangular subdivisions as much as possible. . . .*

43 C.F.R. § 3832.12(a)(1) (“When I record a mining claim or site, how do I describe the lands I have claimed?”) (emphasis added).

Placer claims are specifically addressed as follows:

(c) *Placer claims.* (1) You must describe placer claims by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions except when placer claims are—

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<sup>3</sup> The provision at 30 U.S.C. § 35 (2000) makes placer claims subject to entry and patent in the same manner as vein or lode mining claims, and when situated on lands that have been surveyed by the United States, requires that “the entry in its exterior limits shall conform to the legal subdivisions of the public lands.” Additionally, it establishes that where placer claims are on surveyed lands and conform to the legal subdivisions, no further survey is required, and that after May 10, 1872, all placers shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

The provision at 30 U.S.C. § 36 (2000) states that legal subdivisions of 40 acres may be further subdivided into 10-acre tracts, authorizes association claims held by two or more persons that are less than 10 acres but contiguous, establishes that no individual or association placer claim shall exceed 160 acres in size, and requires that such locations “shall conform to the United States surveys.”

- (i) On unsurveyed Federal lands;
- (ii) Gulch or bench placer claims; or
  
- (iii) Bounded by other mining claims or nonmineral lands.

43 C.F.R. § 3832.12(c).

In his SOR, Collins states that he is appealing BLM's decision "because [the claim] is bounded on the East Side by the patented Contention Lode claim," SOR at 1, apparently invoking the exception to the general requirement to locate mining claims by aliquot part and complete lots provided by 43 C.F.R. § 3832.12(c)(1)(iii) quoted above.

The issue presented by Collins' land description is not the absence of the few additional details provided in the updated version of the map, but the fact that the legal description provided in the location notice erroneously places the 40-acre placer claim entirely within the exterior lines of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  sec. 3, T. 39 N., R. 51 E., while the metes and bounds description shown on both versions of Collins' map places the claim on a diagonal axis in a position that embraces portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of sec. 3. The claim as depicted on the maps is rectangular in shape (1,500 ft. in length and 1,161 ft. in width), but its southwest "quarter" appears to overlie land described as Mineral Survey (M.S.) 3490. In addition, portions of the northwest and northeast "quarters" of the claim appear to embrace a patented mineral entry and, to that extent only, the location is null and void *ab initio*, since a claim located pursuant to the Mining Law of 1872 can be located only on lands belonging to the United States or on lands that were patented subject to reservation of the mineral estate to the United States. *See* 30 U.S.C. § 22 (2000); *see also Kaiser Steel Resources, Inc.*, 135 IBLA 340, 342 (1996), and cases cited.

[1] The exclusion of the patented land and surveyed claim renders Collins' claim an irregular octagon in shape, but all of the land between M.S. 3490 and the patented Contention lode claim, on which Collins located his claim, is open to mineral entry. Because of those two other entries, which we assume pre-date Collins' location, it does not appear practicable to locate a claim by aliquot part to the quarter section as required by 43 C.F.R. § 3832.12(a). The claim can be described only by metes and bounds, which would be the case even if Collins fixed the position of the claim so that those lines that are susceptible to it ran north-south and east-west instead of diagonally. The problem is that he also attempted to describe the claim by aliquot part, ultimately describing a quarter-quarter section that contains only an irregular fraction of his claim as shown on the maps.

BLM thus correctly determined that the claim shown on the location map could not be described by aliquot parts or lots, but erred in failing to consider whether Collins' description is "as compact and regular in form as reasonably possible" and whether the claim can practicably be conformed to the Public Land Survey System. The decision in *Snow Flake Fraction Placer (Snow Flake)*, 37 L.D. 250 (1908), which is specifically cited as authority in 43 C.F.R. § 3832.12, confirms our conclusion. In that case, First Assistant Secretary Pierce declared that

it is unreasonable, impracticable and not in harmony with the conformity provision of the statute to require a claimant to conform to legal subdivisions of the public surveys and the rectangular subdivisions thereof when such requirement would *compel a claimant to place his lines on other prior located claims or when his claim is surrounded by prior locations . . . .*

*Id.* at 258 (emphasis added). The principles and reasoning established in *Snow Flake* were adopted in Circular No. 430, 49 L.D. 62 (Apr. 11, 1922), and, though re-codified in the Department's regulations from time to time, have not changed substantively in the years since. *Melvin Helit*, 157 IBLA 111, 120-21 (2002) (Hemmer, A. J., concurring).

We conclude that BLM erred in failing to consider the applicability of the provision in 43 C.F.R. § 3832.12(a) requiring a metes and bounds description of the claim and the exception provided in 43 C.F.R. § 3832.12(c)(1)(iii). Accordingly, the decision is set aside and remanded for further action.<sup>4</sup>

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action.

\_\_\_\_\_/s/  
T. Britt Price  
Administrative Judge

<sup>4</sup> Because on remand BLM must determine the applicability of the exception stated in 43 C.F.R. § 3832.12(c)(1)(iii) for placer mining claims that are "bounded by other mining claims," we do not today decide whether Collins was entitled to an opportunity to conform his claim pursuant to 43 C.F.R. § 3833.21 before it was declared a nullity.

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Geoffrey Heath  
Administrative Judge